IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1038 (MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Harish Chandra Singh, S/o late Guman Singh, R/o Gulab Ghati Malla, P.O. Kathgodam, Haldwani, District-Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani, Nainital. ……..Respondents.

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WRIT PETITION NO. 1039 (MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Tara Dutt Sanwal,
   S/o Chandra Ballbha Sanwal,
   R/o Village Mura, (Ritha), P.O. Nathuakhan,
   Tehsil & District-Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani, Nainital.

.....Respondents.

&

WRIT PETITION NO. 1041 (MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital.
.....Petitioner.

Versus

1. Ramesh Chandra Joshi, S/o Sri Prem Ballabh Joshi,
R/o Village Baura Kunj P.O. Bhimital.
Haldwani), District-Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani, Nainital.

.....Respondents.

&

WRIT PETITION NO. 1042(MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Dayal Singh, S/o late Fransis,
R/o Chandmari, P.O. Kathgodam, Haldwani,
District Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani, Nainital.

.....Respondents.

Dated: 04.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri A.N. Sharma and Sri C.K. Sharma, Advocate for the petitioner and Standing counsel for the respondent no.2.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 28th May, 2005 (Annexure No. 4 to the writ petition). Further prayers has been made for staying the effect and operation of the impugned order 28th May, 2005 passed by the labour Court Haldwani in Misc. Case No. 158 of 2002 till the final disposal of this petition otherwise the petitioner will have to suffer irreparably.

3. Briefly stated, respondent/ workman has filed a claim petition under Section 33 (c) (2) of the Industrial Disputes Act before the Presiding Officer, Labour Court, Haldwani claiming difference of leave encashment arrears arising out of recommendation of 5th Pay Commission. The claim of the respondent /workman was opposed by the U.P.S.R.T.C. by filing a written statement.

4. The Labour Court on different dates allowed the claim of the respondent/ workman. The aforesaid order passed by the labour Court was challenged before this Hon'ble Court in writ petitions. In writ petitions following directions were given:-

> *"Learned counsel for the petitioner has submitted that according to the direction of the government order dated 24th February, 1999, the fixation of the salary of the employees of the petitioner corporation has been determined by the petitioner corporation but the payment thereof since 01.01.1996 to 31.12.1998 has not*

been made so far, but as soon as the financial position of the petitioner corporation improves or it receives financial assistance from the State Government and direction regarding carving out the plan for the payment thereof, the same shall be made accordingly. The salary as revised according to the implementation of recommendation of the Vth Pay Commission is being paid to the employees of the petitioner corporation since 01.01.1999. In spite of the acute financial crisis the petitioner corporation is making payment according to a plan carved out vide its resolution No. 2553/99 and thereafter issued vide Head Quarters Circular No. 186 CENT/G/99/592 Nigam/97, dated 05.03.1999.

It has further been submitted that the Dehradun region of the petitioner corporation has already paid a sum of Rs. 2,13,86,675.00 to its employees.

Both the parties have agreed that in view of the above, they will consider to clear all the dues by passing the appropriate order for the payment with effect from 1st January, 1996 as per Govt. Order dated 24.02.1999, which was adopted by the policy decision of the U.P.S.R.T.C."

5. In pursuance of the aforesaid order, labour Court has considered the maintainability of the application under Section 33 (c) (2) of the Industrial Disputes Act in favour of the workman. However, in Misc. Case No. 120 of 2002, the Presiding Officer labour Court has passed the order to the following effect:-

"श्रमिक द्वारा अपने प्रार्थना पत्र के संलग्नक में विपक्षी द्वारा कुल देय धनराशि रू0 93771.20 की संगणना कर भुगता करने की मांग की गई है। श्रमिक द्वारा अपने मौखिक बयान में वाद पत्र के संलग्नक के क्रमांक

2,3,4,5,6 का भुगतान प्राप्त होना स्वीकार किया गया है। अर्जित अवकाश नकदीकरण का भुगतान नहीं किये जाने का कथन किया गया है। श्रमिक द्वारा अपने वाद पत्र के संलग्नक के क्रमांक 7 में अर्जित अवकाश नकदीकरण की धनराशि रूपया 48425.00 अवशेष होना कहा गया है जगकि सेवायोजक गवाह ने अपने बयान में श्रमिक को देय अवकाश नकदीकरण की धनराशि रू0 41268.00 बनना कहा गया है। यहाँ यह उल्लेख आवश्यक है कि श्रमिक द्वारा प्रस्तुत अभिलेख प्रदर्श डबलु 4 जिसके द्वारा श्रमिक ने क्षेत्रीय प्रबन्धक उ0प्र0रा0 सड़क परिवहन निगम, नैनीताल से अपने देयकों के एक सप्ताह के अन्दर भुगतान की मांग की गई है। श्रमिक न्यायालय के समक्ष यह प्रमाणित करने में असफल रहा है कि उन्हें किस प्रकार से अर्जित अवकाश नकदीकरण रू0 48425.00 किस प्रकार से देय है। श्रमिक द्वारा प्रस्तुत अभिलेख प्रदर्श डबलु 4 एवं गवाहों के बयानों पर विचार करने के उपरान्त न्यायालय इस निष्कर्ष पर पहुँची है कि वादी श्रमिक विपक्षी से अवकाश नकदीकरण की मद में रू0 41268.00 प्राप्त करने का अधिकारी है जिसका भुगतान सेवायोजक द्वारा श्रमिक को किया जाना है। इस प्रकार अब सेवायोजक द्वारा श्रमिक को देय वेतन एरियर रू0 25334.00, सेवानिवृत्ति पर 203 दिन के अर्जित अवकाश का नकदीकरण रू0 41268.00 जून 97 से अक्टूबर 98 तक का अतिकाल भत्ता रू0 14425.00 कुल रू0 81027.00 की मांग अवशेष है। अतः श्रमिक का प्रार्थना पत्र धारा 33–सी (2) औद्योंगिक विवाद अधिनियम 1947 के अन्तर्गत वेतन अवशेष, अवशेष अतिकाल भत्ता तथा अर्जित अवकाश नकदीकरण रू0 81027.00 की मांग संगणना हेतु स्वीकार की जाती है। सेवायोजकों को निर्देशित किया जाता है कि श्रमिक को संगणित धनराशि का भुगतान दो माह के अन्दर करें, अन्यथा श्रमिक आदेश की तिथि से देय धनराशि पर 6 प्रतिशत ब्याज प्राप्त करने का अधिकारी होगा। तद्नुसार वादी देय धनराशि की संगणना की जाती है।''

6. Counsel for the petitioner has referred the judgment of Apex Court passed in Special Leave to Appeal No. 2229 of 2006, where the similar controversy arose and the following order was passed:-

"Delay condoned.

Issue notice.

There shall be interim stay."

7. In view of the aforesaid, the order passed by the Chairman Labour Court shall be complied with by depositing half of the amount and the same shall be paid to the workman after the satisfaction of the Presiding Officer in two instalments on the duration of two months. The rest of the half shall be paid in two instalments. However, the same shall be subject to the final decision in Special Leave to Appeal in case thue similar matter is pending before the Apex Court with regard to the liability to pay the amount, which has been claimed.

8. Subject to the aforesaid, writ petitions are disposed of. No order as to costs.

(Rajesh Tandon, J.)

04.08.2006
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